UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

WELLINGTON FELIZ
Plaintiff,

- against -

THE CITY OF NEW YORK, BRONX-LEBANON HOSPITAL CENTER

Defendants.

---X

FIRST AMENDED COMPLAINT

1:16-cv-05261
PLAINTIFF DEMANDS A TRIAL BY JURY

COMPLAINT

Plaintiff, WELLINGTON FELIZ, through undersigned counsel, sues Defendants, THE CITY OF NEW YORK; and BRONX-LEBANON HOSPITAL CENTER and alleges the following upon information and belief:

NATURE OF THE ACTION

1. Wellington Feliz ("Mr. Feliz" or "Plaintiff") is deaf and communicates through American Sign Language. This action is on behalf of Mr. Feliz for declaratory and injunctive relief and monetary damages to redress the injuries Mr. Feliz has suffered as a result of being discriminated against by Defendant(s) on the basis of disability, record of disability and/or perceived disability under the Americans with Disabilities Act ("ADA"); Section 504 of the Rehabilitation Act, New York State Executive Law § 296 and the New York City Administrative Code §8-107, to remedy injuries Plaintiff has suffered as a result of being discriminated against, and deprived of public services and public accommodations due to his disability. This claim also asserts false arrest pursuant to the Fourth Amendment of the United States Constitution and violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. This claim further asserts state law actions for false arrest, assault, and battery. Mr. Feliz was forcibly

detained, hospitalized and detained by the named defendants and was deprived of an American Sign Language interpreter and/or auxiliary communication aids during his wrongful detention. Without the benefit of a qualified interpreter or an auxiliary communication device, Plaintiff had little to no knowledge as to why he was arrested, how long he would remain in custody, or what his rights were. While in police custody, Plaintiff was forcibly hospitalized in a psychiatric unit, and was provided no qualified interpreter or auxiliary communication device. Mr. Feliz was never charged with a crime and sustained physical and emotional trauma as a result of the foregoing events. The Complaint states causes of action under federal, state, and city law for deprivations of civil rights and states common law causes of action for tort.

2. This is the First Amended Complaint, amended pursuant to permission by the Court and counsel of which all parties were notified on October 20, 2016.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 in that this action arises under federal law, including the Americans with Disabilities Act ("ADA") 42 U.S.C. § 12101 *et seq*. and Section 504 of the Rehabilitation Act pursuant to 29 U.S.C. §794 *et seq*. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 for violations of Title II of the ADA to redress the deprivation of rights, privileges, and immunities of which Plaintiff has been deprived.

4. Plaintiff invokes the pendant jurisdiction of this Court pursuant to Gibb, 38 U.S. 715 (1966) and 28 U.S.C. § 1367(a) for state law claims of assault, battery, false imprisonment, and negligent hiring.

5. The Plaintiff, WELLINGTON FELIZ, brings this action under 42 U.S.C. Sections 1983 and related state laws seeking compensatory damages, injunctive relief, and attorney's fees for the

Defendant City of New York's violation of his rights afforded by the United States and New York Constitution and under the laws of The State of New York and the City of New York. Plaintiff seeks compensatory damages, attorney's fees, and punitive damages against Defendant Bronx Lebanon Hospital Center's violation of his rights afforded by United States and New York Constitution and under the laws of The State of New York and the City of New York.

6. The venue of this action is properly placed in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because the events having operative significance in this case which give rise to the claims herein occurred within this District.

7. This Court has *in personam* jurisdiction over Defendants because they are located in, conducts operations within, transacts business in and provides services within the City of New York.

CONDITION PRECEDENT

8. Plaintiff has performed all conditions precedent to the filing of this action, including the timely filing of a Notice of Claim against the City of New York and the New York City Police Department, stamped received on October 2, 2015, setting forth the time, place, and manner in which the incident occurred.

9. Hearings pursuant to General Municipal Law were repeatedly scheduled on December 23, 2015, February 9, 2016, and April 19, 2016 but were adjourned once by Plaintiff and the other times by Defendant. On the last scheduled date when Plaintiff informed Defendant he would be present with a sign language interpreter to communicate with counsel, Defendant declined to proceed with the hearing with Plaintiff utilizing his interpreter and such hearing has been waived.

10. This complaint was timely filed within one year and ninety days of the events described herein.

PARTIES

11. Plaintiff is a resident of the State of New York and resides at 115B West 168th Street, Apartment 1E, Bronx, New York 10452.

12. At all times material herein, defendant THE CITY OF NEW YORK ("CITY OF NEW YORK"), was and still is a duly incorporated municipality of the State of New York, County of New York, whose seat of governance was and still is located at 250 Broadway, New York, New York 10007.

13. At all times material herein, BRONX-LEBANON HOSPITAL CENTER ("BRONX-LEBANON HOSPITAL") was a domestic not for profit corporation organized an existing under the laws of the State of New York.

14. At all times material herein BRONX-LEBANON HOSPITAL owned, operated, maintained, controlled, and managed a hospital known as BRONX-LEBANON HOSPITAL pursuant to the laws of the State of New York for the care of the sick, located at addresses which include, but are not limited to 1650 Grand Concourse, Bronx, New York 10457 at locations including but not limited to emergency rooms, patient examination rooms, diagnostic facilities, psychiatric facilities, and the appurtenances thereto and which provided personnel, including doctors, nurses, attendants, technicians, and other health care providers for the care and treatment of its patients, and which held itself out to the public as furnishing care and treatment facilities where patients, including Plaintiff, WELLINGTON FELIZ, could receive emergency and psychiatric care and treatment.

MATERIAL FACTS

15. At all times material herein, Plaintiff was deaf and his primary language was and remains American Sign Language.

16. At all times material herein, Plaintiff was registered as legally blind with the Commission for the Blind and Visually Handicapped in accordance with New York State Law, Section 8704.

17. On or about July 7, 2015, Plaintiff was inside his lawful residence at 115B West 168th Street, Apartment 1E, Bronx, New York 10452.

18. Inside his residence, Plaintiff was engaged in lawful activity for which no probably cause existed for his arrest or detainment.

19. On or about July 7, 2015, two police officers employed by NYPD arrived at Plaintiff's residence and summoned Plaintiff to the door.

20. Neither police officer had an American Sign Language interpreter or an auxiliary aid with which to communicate with Plaintiff.

21. The police officers attempted to use written notes to communicate with Plaintiff and to the best of Plaintiff's knowledge, asked if he was okay.

22. Written notes are an inadequate means of communication with Plaintiff whose primary language is American Sign Langue, has limited English proficiency, and who has tunnel vision.

23. Plaintiff attempted to answer the question he believed was asked by the police officer by hand gestures to inquire why they were there and nodding that he was indeed all right.

24. Upon Plaintiff's attempts to use sign language, the officers physically put his hands down to stop him from communicating in American Sign Language.

25. At the time the police officers observed Plaintiff in his home he was in no apparent distress, was injured and did not display aggressive behavior.

26. The police officers then left Plaintiff in his home.

27. Plaintiff thereafter observed the same officers through his window in a marked car outside of his residence.

28. Plaintiff proceeded towards the officers to attempt to determine why they remained at his residence.

29. Plaintiff attempted to communicate by hand gestures and written notes to ask why the officers were there.

30. The police officers wrote back, in sum and substance to the best of Plaintiff's understanding, that they "called an ambulance" for Plaintiff.

31. Recognizing that he did not understand the situation, Plaintiff then gestured with his hands that he was going to get someone to help him communicate and moved back towards his residence.

32. As Plaintiff moved towards his residence, the police officers forcibly grabbed Plaintiff.

33. The police officers then forced Plaintiff to the ground, against a fence and handcuffed him.

34. Defendants did not communicate to plaintiff prior to then that he was under arrest.

35. Plaintiff was restrained against his will for over one hour until an ambulance arrived.

36. Throughout his forcible detention and restraint, Plaintiff was deprived of an American Sign Language Interpreter or an auxiliary communication device and was unaware why he was so restrained.

37. Multiple witnesses observed the interaction between Plaintiff and the police officers and such interaction is memorialized in a recording.

38. In such recording, witnesses call out to the police officers that Plaintiff is deaf and cannot speak to which the police officers replied "we know".

39. The police officers proceed to verbally speak to Plaintiff telling him to "calm down" as he struggles and his hands are pulled behind his back while Plaintiff signs to the camera for help.

40. The police officers through the entirety of the interaction with Plaintiff did not communicate with him in a medium he could understand and did not attempt to summon an interpreter or utilize an auxiliary communication device though they had an opportunity to do so.

41. After Plaintiff was restrained in handcuffs, the police officers continued to not call for an interpreter or utilize an auxiliary communication device for approximately one hour Plaintiff was forced to wait for an ambulance.

42. Plaintiff sustained bruises from the handcuffs.

43. Plaintiff was then forced to walk to the ambulance that had arrived and was taken to the Emergency Room at Bronx-Lebanon Hospital.

44. In the ambulance, Plaintiff was deprived of an American Sign Language interpreter or other auxiliary communication device.

45. In the ambulance, Plaintiff was prohibited from communicating by American Sign Language as his hands were restrained in handcuffs.

46. Plaintiff was held at Bronx-Lebanon Hospital against his will from July 7, 2015 through July 8, 2015.

47. Plaintiff was not permitted to leave the hospital until his discharge on July 8, 2015.

48. Plaintiff had reason to believe he was unable to leave the hospital until his discharge on July 8, 2015.

49. During Plaintiff's confinement he was transferred from the Emergency Department to the Psychiatric Ward.

50. During Plaintiff's confinement at Bronx-Lebanon Hospital, no American Sign Language Interpreter or auxiliary communication device was provided to him including on admission, examination, and discharge.

51. Bronx-Lebanon's medical records indicate such entity's awareness of Plaintiff's deafness and tunnel vision, indicate that he needs a sign language interpreter and has limited English proficiency.

52. At the hospital, Plaintiff's mother, whose primary language is Spanish, requested a sign language interpreter for Plaintiff in the Emergency Department and the Psychiatric Department by speaking to personnel in both departments.

53. Plaintiff also attempted to request an American Sign Language interpreter on his own behalf by signing to agents and employees of Bronx-Lebanon but his signs were ignored and disregarded.

54. The requests for an interpreter were ignored by the agents and servants of Bronx-Lebanon who proceeded to conduct all communication with Plaintiff by using his mother as a conduit.

55. Bronx-Lebanon's psychiatric evaluation of Plaintiff was conducted through Plaintiff's mother who herself is not fluent in American Sign Language and had difficulty communicating effectively with Plaintiff.

56. Only after his confinement at Bronx-Lebanon when he was able to communicate with him mother through a video relay interpreter (VRI) via telephone, was Plaintiff able to understand what occurred in the hospital.

57. During Plaintiff's evaluation at Bronx-Lebanon he had no knowledge or understanding of what was being asked by the physicians.

58. Plaintiff did not affirmatively provide any of the answers or responses recorded in the Bronx-Lebanon Hospital records during his examination.

59. The events detailed above caused Plaintiff severe pain and suffering, emotional distress and anguish, humiliation, and a reasonable fear that these events would reoccur in the future.

60. On or about October 2, 2015, Plaintiff filed a Notice of Claim with the City of New York regarding claims for denial of constitutional rights, false arrest, assault, and battery.

COUNT 1
DISCRIMINATION UNDER THE AMERICANS WITH DISABILITIES ACT AND THE REHABILITATION ACT

61. Plaintiff repeats and re-alleges paragraph 1-59 fully as if said paragraphs were fully set forth herein at length.

62. Defendants CITY OF NEW YORK and their agents, servants, officers, and/or employees acted under color of statute, ordinance, regulation, custom or usage of a State.

63. Defendants CITY OF NEW YORK, their agents, servants, officers, and/or employees and BRONX-LEBANON HOSPITAL violated Title II of the Americans with Disabilities Act ("ADA") of 1990 (Pub. L. 101-336) (ADA), as amended, as such title appears in volume 42 of the United States Code, beginning at section 12101.

64. Title II of the ADA "applies to all services, programs, and activities provided by or made available by public entities." *See* 28 C.F.R. §35.130(b)(7).

65. Section 12132 of the ADA specifically states:

> No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

66. Section 504 of the Rehabilitation Act, 29 U.S.C. §794(a) specifically states:

> No otherwise qualified individual with a disability…shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be

> subjected to discrimination under any program or activity receiving Federal financial assistance.

67. The anti-discrimination provisions of Title II of the ADA and Section 504 of the Rehabilitation Act are enforceable through implied private rights of action. *Barnes v. Gorman*, 536 U.S. 181 (2002).

68. Plaintiff is a "qualified individual" inasmuch as he is an individual who has a disability, deafness, and "who with or without reasonable modifications to rules, policies or practices, the removal of…communication…barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42. U.S.C. Section 12131(2).

69. Defendants CITY OF NEW YORK and NYPD are covered entities inasmuch as each is a public entity.

70. Law enforcement officers who are acting in an investigative or custodial capacity are performing services, programs, or activities within the scope of Title II of the ADA and "on-the-street" interactions are not exempt from Title II coverage. *Williams v. City of New York*, 121 F. Supp. 3d 354 (S.D.N.Y. 2015). A copy of the opinion and order of *Williams* is attached hereto as Exhibit A.

71. Defendant BRONX-LEBANON HOSPITAL is a covered entity inasmuch as it operates a program that receives federal funds and has fifteen or more employees.

72. Defendants who interacted with Plaintiff from CITY OF NEW YORK and BRONX-LEBANON HOSPITAL regarded him as being disabled and were aware of his deafness as evidenced by records of Bronx-Lebanon and video recordings of CITY OF NEW YORK.

73. Plaintiff was entitled to the same law enforcement services that Defendant CITY OF NEW YORK provide to other non-disabled persons.

74. The law enforcement services that Defendant CITY OF NEW YORK provides to non-disabled or "hearing" persons is communicating with such persons at the scene of a suspected crime to corroborate a complaining witness or ascertain whether probable cause exists. *See* Transcript of Summary Judgment Motion for *Williams v. City of New York* attached hereto as Exhibit "B" at 9.

75. Plaintiff was entitled to the benefit of lawful exercises of police powers, including but not limited to the right not to be unlawfully discriminated against and detained.

76. Plaintiff was entitled to the same health care services that Defendant BRONX-LEBANON HOSPITAL provides to other non-disabled persons.

77. The health care services Defendant BRONX-LEBANON HOSPITAL provides to other non-disabled or "hearing" persons is to communicate with such persons in diagnosing and treating any presenting illness and permitting them to participate in their care.

78. Plaintiff was entitled to the benefit of being able to communicate with physicians, nurses, and other medical personnel as they attempted to provide medical treatment and to understand the treatment he was being provided.

79. All defendants discriminated against Plaintiff solely because of his disability and failed to provide reasonable accommodations.

80. CITY OF NEW YORK's actions were taken under circumstances giving rise to an inference of discrimination. Defendants intentionally discriminated against Plaintiff and/or were deliberately indifferent towards Plaintiff's rights in that Plaintiff was engaged in lawful activity in his home, was known to be deaf by such Defendant, was verbally spoken

to by such Defendant notwithstanding their awareness of his deafness, was forcibly restrained from communicating notwithstanding that he posed no apparent danger, and was publicly humiliated by police officers forcibly restraining him against a fence as he signed for helped and such officers then falsely informed the witnesses who congregated that Plaintiff was suicidal.

81. No interpreter or auxiliary communication device was provided to Plaintiff by Defendants CITY OF NEW YORK despite these defendants' obligations under federal, state, and local law, as well as their settlement agreement with the United States of America to resolve claims of deaf discrimination by the New York City Police Department. Such settlement agreement is attached hereto as Exhibit "C".

82. BRONX-LEBANON's actions were taken under circumstances giving rise to an inference of discrimination. Defendants intentionally discriminated against Plaintiff and/or were deliberately indifferent towards Plaintiff's rights in that such Defendant was patently aware that Plaintiff was deaf, Defendant had the ability and means to contact an interpreter or utilize a VRI yet instead used Plaintiff's Spanish speaking mother, who herself has limited ability to communicate with the Plaintiff without utilizing auxiliary communication devices and is not able to otherwise adequately interpret to and for the Plaintiff, to evaluate his mental state, ignored Plaintiff's sign language request for an interpreter and repeatedly ignored his mother's verbal requests for an interpreter, and ultimately discharged Plaintiff without having ever provided an adequate assessment of Plaintiff's mental health.

83. No interpreter or auxiliary communication device was provided to Plaintiff by Defendant BRONX-LEBANON HOSPITAL despite this defendant's obligation under

federal, state, and local law, and to provide medical care within the accepted standards of care and treatment.

84. The CITY OF NEW YORK is vicariously liable for the violations of the ADA and Rehabilitation Act by its employees. Patton v. Dumpson, 498 F. Supp. 933, 942 (S.D.N.Y. 1980).

85. The CITY OF NEW YORK is further liable for the violations of the ADA and Rehabilitation Act by its employees pursuant to Monell as the CITY OF NEW YORK has official policies or customs that caused plaintiff to be subjected to a violation of his rights under the ADA and Rehabilitation Act as follows:

(a) The CITY OF NEW YORK has expressly adopted a policy or custom that the ADA is inapplicable to on-the-street interactions with the deaf or hearing impaired until an arrest has been made. Evidence of such policy is found in Exhibit B at pages 4, 14-15. Such policy directly caused Plaintiff's injuries herein as the accommodations the ADA requires of qualified interpreters or auxiliary communicated devices were denied to Plaintiff during the above events and deprived him of his rights under the ADA. To wit: the policy of the ADA being inapplicable to on-the-street interactions with the deaf caused the police officers who responded to Plaintiff's home to forcibly restrain, arrest, detain, and transport him without requesting or utilizing the services of a qualified interpreter or auxiliary communication device to communicate with Plaintiff to determine whether or not there existed probable cause to arrest him or probable cause to take him to the hospital. This resulted in Plaintiff being held against his will from July 7, 2015 through July 8, 2015 although he was not a danger to himself or others.

(b) The CITY OF NEW YORK is further liable under Monell for failing to train its police officers. To wit: The CITY OF NEW YORK failed to train its police officers on how to interact with the deaf and hearing impaired in a manner to respect their rights under the ADA and the Rehabilitation Act. The failure to train occurred in a manner evincing a deliberate indifference to the rights of the deaf and hearing impaired. Specifically after the settlement agreement between the New York City Police Department and the United States of America in 2009, (Exhibit "C"), this defendant was on notice that its procedures and officer training were not satisfying its legal obligations under the ADA to the deaf and hearing impaired, and as such, they were on notice that deaf persons were having their civil rights violated. Notwithstanding such notice and the 2009 agreement, the City has not made changes to the training program of police officers following the agreement. *See* Exhibit A at 26. This lack of training despite notice of deficiencies in interacting with the deaf and hearing impaired led to the officers who interacted with Plaintiff treating him in the manner described above. The lack of training in how to interact with the hearing impaired resulted in the police officers who responded to Plaintiff's home, failing to request an interpreter and/or use an auxiliary communication device, such police officers verbally speaking at Plaintiff and issuing verbal orders to Plaintiff despite the fact that he could not hear them, and caused such officers to arrest and transport Plaintiff to a hospital without determining whether probable cause existed that Plaintiff had committed a crime or that probable cause existed that Plaintiff was a danger to himself or others.

(c) Defendant CITY OF NEW YORK utilizes a "Language Access Plan" for persons with limited English proficiency that was in effect during the above described events. The Language Access Plan is attached hereto as Exhibit "D". The Language Access Plan identifies six languages as those for the baseline languages in such policy and none of those includes American Sign Language. Exhibit D at 3. The policy of the CITY OF NEW YORK in its Language Access Plan accommodates foreign languages yet does not include American Sign Language and excludes the deaf and hard of hearing, including Plaintiff. The Language Access Plan that accommodates foreign language pursuant to Title VI yet not including the deaf under the ADA further demonstrates a deliberate indifference to protecting the rights of the deaf and hard of hearing. The failure to include American Sign Language in such plan resulted in Plaintiff being denied language access during the events of July 7, 2015 to July 8, 2015 and denied him the ability to communicate with police officers.

86. As a direct and proximate results of Defendants' discriminatory conduct, Plaintiff suffered adverse consequences. Plaintiff suffered physical injury, severe extreme humiliation, emotional pain, and trauma, to his detriment.

COUNT II
DISCRIMINATION UNDER THE NEW YORK STATE EXECUTIVE LAW

87. Plaintiff repeats and realleges Paragraphs 1-86 as if said paragraphs were fully set forth herein at length.

88. All Defendants' acts, practices, and policies described herein constitute discrimination against Plaintiff on the basis of his disability in violation of New York State Executive Law §296 et seq.

89. All Defendants' acts, practices, and policies described herein constitute discrimination against Plaintiff on the basis of his record of disability, in violation of New York State Executive Law §296 et seq.

90. All Defendants' acts, practices and policies described herein constitute discrimination against Plaintiff on the basis of his perceived record of disability, in violation of New York State Executive Law §296 et seq.

COUNT III
DISCRIMINATION UNDER THE NEW YORK CITY ADMINISTRATIVE CODE

91. Plaintiff repeats and realleges Paragraphs 1-90 as if said paragraphs were fully set forth herein at length.

92. All Defendants' acts, practices, and policies herein constitute discrimination against Plaintiff on the basis of his disability, in violation of the New York City Administrative Code §8-107 et seq.

93. All Defendants' acts, practices, and policies herein constitute discrimination against Plaintiff on the basis of his record of disability, in violation of the New York City Administrative Code §8-107 et seq.

94. All Defendants' acts, practices, and policies herein constitute discrimination against Plaintiff on the basis of his perceived record of disability, in violation of the New York City Administrative Code §8-107 et seq.

COUNT IV
PURSUANT TO § 1983 FOR VIOLATION OF HIS RIGHTS UNDER THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION

95. Plaintiff repeats and realleges Paragraphs 1-99 as if said paragraphs were fully set forth herein at length.

96. The Fourth Amendment provides individuals the right to be free from unreasonable seizures, including arrest without probable cause.

97. The police officers employed by CITY OF NEW YORK were acting under color of law when they handcuffed Plaintiff and transported him to a hospital against his will.

98. There was no probable cause for arresting the Plaintiff and he was not engaged in unlawful activity.

99. Plaintiff was never formally charged with a crime in connection with the events described above.

COUNT V
FALSE ARREST

100. Plaintiff repeats and realleges Paragraphs 1-99 as if said paragraphs were fully set forth herein at length.

101. Plaintiff was not guilty of any crime that could subject him to arrest and Defendant CITY OF NEW YORK had no reasonable basis to conclude that any such crime had been committed by Plaintiff.

102. The police officers' observation of Plaintiff's conduct prior to their detention of Plaintiff did not demonstrate that Plaintiff was a danger to himself or others.

103. Nonetheless, Defendant caused Plaintiff to be restrained, arrested, and held against his will for an extended period.

104. No charges were ever filed against Plaintiff in Court for the events of July 7, 2015 nor was any conviction ever obtained at trial.

105. As the direct and immediate result of the foregoing conduct, Plaintiff has been caused to suffer physical injury, severe humiliation, emotional and psychological trauma, all to his detriment.

106. CITY OF NEW YORK and NYPD are liable for the actions of its police officers under theories of agency and *respondeat superior*.

COUNT VI
ASSAULT AND BATTERY

107. Plaintiff repeats and realleges Paragraphs 1-106 as if said paragraphs were fully set forth herein at length.

108. As described above, Defendant CITY OF NEW YORK through their officers and/or employees, physically invaded Plaintiff's personal space and menaced and threatened Plaintiff with gestures and movement, the intent of which was to arouse apprehension of harmful or offensive bodily contact, all for the purpose of terrorizing Plaintiff. Plaintiff was placed in immediate danger of life and limb as a result of this conduct and suffered severe emotional trauma, anguish, and humiliation as a result.

109. Accordingly, Defendants CITY OF NEW YORK intentionally placed Plaintiff in apprehension of an imminent, offensive, and/or harmful touching.

110. Defendants' threats were independent of any physical contact.

111. As further described above, Defendant CITY OF NEW YORK subjected Plaintiff to forceful, unwanted physical touching.

112. As a direct and immediate result of this touching, Plaintiff was cause to suffer bodily harm and emotional distress and anguish, all to his detriment.

113. Defendants' acts were committed with a conscious and deliberate disregard of the interest of others such that their conduct may be called willful or wanton.

114. The CITY OF NEW YORK and NYPD are liable for the actions of its police officers under theories of agency and *respondeat superior*.

COUNT VII
INJUNCTION

115. Plaintiff repeats and realleges Paragraphs 1-114 as if said paragraphs were fully set forth herein at length.

116. Money damages are insufficient to fully address the claims set forth herein, and irreparable injury will result unless Plaintiff is granted a permanent injunction requiring New York City Police Department's officers for on-the-street interactions with the deaf or hearing impaired to provide effective communication through the use of interpreter services whether through live interpreters or auxiliary communication devices.

117. The police officers who injured Plaintiff as described above are officers who are assigned to the precinct that serves Plaintiff's permanent residence and as such Plaintiff is likely to have contact in the future with this police precinct.

118. The police department provides a wide variety of public services that members of the public, including Plaintiff, have a right to benefit from. Exhibit D at 1.

119. Plaintiff is likely to utilize one or more of such services which include law enforcement, emergency services, answering questions, and peaceful community assistance services in the future.

120. Plaintiff is likely to be engaged in the same behavior that resulted in the actions of the Defendant described above: lawfully being present in his permanent residence and not being engaged in illegal behavior, and interaction with police officers from the City of New York.

121. Plaintiff is and will in the foreseeable future remain a person of limited English proficiency who communicates effectively solely through American Sign Language.

122. Money damages are insufficient to fully address the claims set forth herein, and irreparable injury will result unless Plaintiff is granted a permanent injunction requiring Bronx

Lebanon Hospital Center to provide American Sign Language interpreters or Auxiliary Communication aids to deaf or hearing-impaired person who are hospitalized.

123. Plaintiff was transported from his permanent residence to the Emergency Room at Bronx Lebanon Hospital; Plaintiff's permanent residence and local hospital will remain the same for the foreseeable future; BRONX LEBANON remains the closest hospital where an ambulance can transport the Plaintiff from his home.

124. Plaintiff and will in the foreseeable future remain a person of limited English proficiency who communicates effectively solely through American Sign Language.

125. Defendant BRONX LEBANON's personnel in the Emergency Department and Psychiatric Unit repeatedly disregarded Plaintiff's need and requests for interpreting services notwithstanding their awareness of his need for an interpreter while he was compulsorily hospitalized at their facility.

126. Whether Plaintiff uses the hospital again when he is ill and whether he is forcibly taken there as described above, the practices of BRONX LEBANON in failing to accommodate his disability, failing to provide effective communication by failing to provide an interpreter or auxiliary communication device will remain.

WHEREFORE, Plaintiff demands judgment as follows:

i. On the First Cause of Action a judgment against Defendants and an award of compensatory damages for emotional distress, punitive and/or exemplary damages, attorneys' fees and costs, pre and post-judgment interest, in an amount to be determined at trial in excess of the jurisdictional limits of the Court, and further relief as this Honorable Court deems just, equitable and proper;

ii. On the Second Cause of Action a judgment against Defendants and an award of compensatory damages for emotional distress, punitive and/or exemplary damages, attorneys' fees and costs, pre and post-judgment interest, in an amount to be determined at trial in excess of the jurisdictional limits of the Court, and further relief as this Honorable Court deems just, equitable and proper;

iii. On the Third Cause of Action a judgment against Defendants and an award of compensatory damages for emotional distress, punitive and/or exemplary damages, attorneys' fees and costs, pre and post-judgment interest, in an amount to be determined at trial in excess of the jurisdictional limits of the Court, and further relief as this Honorable Court deems just, equitable and proper;

iv. On the Fourth Cause of Action a judgment against Defendants and an award of compensatory damages for emotional distress, punitive and/or exemplary damages, attorneys' fees and costs, pre and post-judgment interest, in an amount to be determined at trial in excess of the jurisdictional limits of the Court, and further relief as this Honorable Court deems just, equitable and proper;

v. On the Fifth Cause of Action a judgment against Defendants and an award of compensatory damages for emotional distress, punitive and/or exemplary damages, attorneys' fees and costs, pre and post-judgment interest, in an amount to be determined at trial in excess of the jurisdictional limits of the Court, and further relief as this Honorable Court deems just, equitable and proper;

vi. On the Sixth Cause of Action a judgment against Defendants and an award of compensatory damages for emotional distress, punitive and/or exemplary damages, attorneys' fees and costs, pre and post-judgment interest, in an amount to be determined at trial in excess of the jurisdictional limits of the Court, and further relief as this Honorable Court deems just, equitable and proper;

vii. On the Seventh Cause of Action a judgment against Defendants and a permanent injunction requiring the New York City Police Department and Bronx-Lebanon Hospital to have proper training, policies, and procedures in place and to provide reasonable accommodations such as American Sign Language Interpreters or Auxiliary Communication Devices to all deaf or hearing-impaired persons in on-the-street interaction with law enforcement as to the City of New York or hospitalization as to Bronx-Lebanon Hospital Center, and further relief as this Honorable Court deems just, equitable and proper.

JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: November 7, 2016
New York, New York

Respectfully submitted,

THE JACOB D. FUCHSBERG LAW FIRM

By: [signature]

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK Case No.: 1:16-cv-05261

WELLINGTON FELIZ,

Plaintiff,

- against -

THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, BRONX-LEBANON HOSPITAL CENTER,

Defendants

FIRST AMENDED COMPLAINT

THE JACOB D. FUCHSBERG LAW FIRM, LLP
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To

Attorneys for

Service of a copy of the within is hereby admitted.

Dated: ____________201___

PLEASE TAKE NOTICE:

___ NOTICE OF ENTRY that the within is a (certified) true copy of a ____________ duly entered in the ______________ office of the clerk of the within named court on ______________ 201__

___ NOTICE OF SETTLEMENT that an order of which the within is a true copy will be presented for settlement to the HON. ____________________ one of the judges of the within named Court, at ______________________ on ________________ 201__ at ______ ___M

Dated:

Yours, etc.

THE JACOB D. FUCHSBERG LAW FIRM, LLP